

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, *et*
al.,

Plaintiffs,

v.

24 CV 3973 (AS)

LIVE NATION ENTERTAINMENT,
INC., *et al.*,

Defendants.

Conference
(via Microsoft Teams)

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New York, N.Y.
May 9, 2025
3:00 p.m.

Before:

HON. ARUN SUBRAMANIAN,

District Judge

APPEARANCES

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
Attorneys for Plaintiff United States
BY: BONNY E. SWEENEY
JOHN THORNBURGH

CRAVATH SWAINE & MOORE LLP
Attorneys for Defendants
BY: DAVID R. MARRIOTT

1 THE COURT: Good afternoon. We are here for a
2 conference in 24 CV 3973. Can I get appearances from the
3 attorneys who will be speaking on this call.

4 MS. SWEENEY: Good afternoon, your Honor, this is
5 Bonnie Sweeney. Mr. Thornburgh is going to be handling the
6 motion today.

7 THE COURT: OK. Great.

8 MR. THORNBURGH: This is Mr. Thornburgh, your Honor.
9 Good afternoon.

10 THE COURT: Good afternoon.

11 For the defendants.

12 MR. MARRIOTT: Good afternoon, your Honor, David
13 Marriott for defendants.

14 THE COURT: Good afternoon.

15 Mr. Marriott, let me just make sure I understand what
16 the defendants are saying.

17 So if the individuals on your supplemental disclosure
18 who were not on the initial disclosure appear on your trial
19 witness list, if the case gets to trial, then you're saying the
20 plaintiffs get to depose those people. Is that right?

21 MR. MARRIOTT: If they have not been deposed, your
22 Honor, that's the parties' agreement, yes.

23 THE COURT: Those depositions would not be subject to
24 the 300-hour limit.

25 MR. MARRIOTT: Well, I suppose that's right. The

1 parties haven't really -- that's an ambiguity, I suppose, in
2 the drafting of things and one we have not discussed, but I
3 think it's probably fair to say, with the Court's permission,
4 we would need to exceed that limit on the assumption that
5 people are going to use the time that they have presently been
6 given.

7 THE COURT: Right.

8 For summary judgment purposes you are not going to be
9 relying on any affirmations from these individuals, right?

10 MR. MARRIOTT: Well, I think it would be kind of
11 subject to the same thing, your Honor. We haven't mapped out a
12 summary judgment motion in its detail, and I don't know
13 precisely what we would be using in support of that motion.
14 But I don't have any hesitation in saying, to the extent we
15 were to do that, we would have every expectation that
16 plaintiffs would have an opportunity to depose those people.

17 THE COURT: For summary judgment.

18 MR. MARRIOTT: Yes, your Honor.

19 If they hadn't been deposed -- if they hadn't been
20 deposed before they had to respond, if we relied upon them, we
21 would expect that the Court would allow them, and we would not
22 oppose them having those depositions.

23 THE COURT: In that case we can't actually have you
24 put in a motion for summary judgment and then, while the
25 plaintiffs are crafting their response, be in the position of

1 having to depose witnesses. Don't you think that's going to be
2 a little hard to do?

3 MR. MARRIOTT: Well, I suppose it might be a little
4 bit hard, your Honor, but we are doing a lot harder things than
5 that at present, given all the things that are going on.

6 That said, that isn't specifically contemplated. I
7 don't, as I sit here, have reason to think we are going to be
8 relying and seeking summary judgment on the people whose
9 depositions we are, I think, talking about, which are the
10 depositions of some venues and depositions of probably,
11 presumably, some artists.

12 It would just depend, I suppose, what we did, your
13 Honor, but I don't imagine we would be relying upon much in
14 that regard, and I don't imagine there would be much of a
15 burden associated with doing it upon receiving the motion. If
16 there were, we would be undoubtedly open to some adjustment in
17 the response time so that the defendants weren't jammed up.

18 THE COURT: But if you agree to an adjustment of the
19 response time, then you are going to take time away from me
20 deciding the motions consistent with our current schedule.

21 MR. MARRIOTT: I suppose that's true. That's not the
22 intent of suggesting that, your Honor.

23 THE COURT: I know. I can take the heat too. I can
24 work weekends and nights. I'm used to it.

25 That's helpful.

1 Mr. Thornburgh, what Mr. Marriott is saying is, there
2 is not really any issue because they are not planning on
3 actually relying on any affirmations of these people for
4 summary judgment. If they do, then you can depose them in that
5 period, and then for trial purposes the parties' deposition
6 protocol already allows you to take those depositions not
7 subject to the 300-hour limit.

8 So if all of that is true, then what is the basis for
9 the 100 extra hours, given that the primary argument is this
10 late supplement of the initial disclosures?

11 MR. THORNBURGH: Your Honor, two points there.

12 First of all, consistent with your Honor's pretrial
13 practices, the witness list would not be exchanged until
14 January 30 of next year, and trial or jury selection is slated
15 to start March 2.

16 What potentially could happen is defendants add a
17 bunch of individuals to their witness lists on January 30, and
18 we are stuck not only trying to prepare for trial but also to
19 schedule and plan depositions between January 30 and March 2.
20 The same is true for summary judgment. If defendants disclose
21 these individuals while we are going through summary judgment,
22 plaintiffs are now forced to work on summary judgment motions
23 and our response to summary judgment while at the same time
24 proceeding to take depositions. In that sense, it seems really
25 to sandbag us in an unfair way.

1 My second point, your Honor, the purpose of that
2 provision that we are talking about in the deposition protocol
3 was to allow for depositions to take place of people that
4 either side identifies maybe during the expert discovery
5 process or after the end of fact discovery that they want to
6 add to their trial witness list. It was not intended to allow
7 one side two months before the end of fact discovery to
8 identify for the first time 100 individuals -- over 100
9 individuals that defendants are now saying they may rely on to
10 support their defenses. I think it fundamentally is
11 inconsistent with the basis of that provision when we were
12 discussing it with defendants.

13 THE COURT: How much of the 300-hour limit have you
14 used to date?

15 MR. THORNBURGH: There was a deposition today, your
16 Honor, so I don't have the exact up-to-date number, but it's
17 approximately 65 and a half hours.

18 THE COURT: So you're taking a lot of depositions over
19 the next two months.

20 MR. THORNBURGH: That's correct, your Honor.

21 I'll just add that we have been working with
22 defendants in good faith to schedule those, but in some
23 instances, particularly -- some of them are nonparties, and
24 they have had limited availability because of, say, a sports
25 season, or something like that. But we have also had, in some

1 cases, difficulty scheduling defendants' employees for
2 depositions, and there has been a handful of instances where we
3 have had to push out a deposition to be scheduled for three or
4 four weeks. Certainly now we have a number of depositions to
5 take in the next six to seven weeks, as you just indicated.

6 THE COURT: What's your response to the defendants'
7 observation, I suppose, that the reason for this logjam and the
8 need for an extension isn't really anything about these
9 disclosures but rather the unformed nature of the plaintiffs'
10 case, meaning that rather than targeting particular claims and
11 allegations and focusing on those, the plaintiffs have too many
12 claims, too many theories, and are looking for too many kind of
13 piles of documents, such that they just have a lot of stuff but
14 not really a coherent theory of the case.

15 And what's your response to that, given that we are
16 getting close to the end of the road in fact discovery, moving
17 to expert discovery, where the defendants are saying, look, the
18 plaintiffs really need to sharpen things up if they want to
19 kind of move this case on the current schedule, overcome
20 summary judgment, etc.?

21 MR. THORNBURGH: Well, the first thing I would say,
22 your Honor, is, the claims that plaintiffs have brought are
23 indicative of the wide-ranging anticompetitive conduct that we
24 think defendants have been engaged in across the industry.
25 It's not simply that we are not focused. There is a lot of

1 conduct for us to address.

2 Second, we are not going out and deposing random
3 venues or random third parties. It is more a reflection of the
4 fact, as indicated in our letter motion that, for example, at a
5 venue there are individuals, often a single individual, maybe a
6 few, that work on the ticketing side of things, and then there
7 are separate individuals, distinct individuals, who work on the
8 concert or promotion side of the house. While sometimes they
9 overlap, oftentimes they do not. So what that necessitates,
10 based on the claims we have brought, is to get deposition
11 testimony from both of those individuals, somebody working on
12 ticketing and somebody working on concerts and promotions.

13 It's not that plaintiffs' claims or case is not
14 focused, your Honor. It's that there is lots of relevant
15 information, lots of relevant testimony to get, and we are
16 endeavoring to do that in the most efficient way possible, and
17 I think we have done to that date, but there is additional,
18 certainly, relevant information that we think we would like to
19 get before discovery closes.

20 THE COURT: Also, with the 300-hour limit, here is
21 where you have to remind me where we left things with the case
22 management plan. Both sides have 300 hours, is that right?

23 MR. THORNBURGH: That's correct, your Honor.

24 THE COURT: If I were to extend your time to 400
25 hours, you would have no objection to my also extending the

1 defendants' time to 400 hours, right, which will obviously be
2 taxing for the plaintiffs as they proceed with their case.

3 MR. THORNBURGH: Of course not, your Honor.

4 THE COURT: Mr. Marriott, you can respond to any or
5 all of that.

6 MR. MARRIOTT: Thank you, your Honor.

7 With respect to the suggestion of sandbagging, I
8 respectfully don't think that's in any way what's going on
9 here. While it is true that there are a number of additional
10 people added in the supplemental disclosures, a lot of that, I
11 think, rather than being characterized as a data dump, which is
12 the way it has been characterized, is an information dump or
13 some sort of tactic. It's as much as anything as a
14 housekeeping exercise bringing those disclosures into
15 conformity with what it is that the parties have learned in the
16 case.

17 And the parties contemplated this sort of April 25
18 deadline with the very idea that there would be disclosures of
19 a number of additional people on both sides, and that's
20 precisely what we got from the plaintiffs. We got 80 or so
21 nonparties from the plaintiffs, and these are people, by the
22 way, your Honor, that we put on the list that are, for the most
23 part, if not almost entirely, people who would be in no way a
24 surprise. Either they were already disclosed by the
25 plaintiffs, they were included in the plaintiffs' initial or

1 supplemental disclosures or, certainly in the cases of the
2 artists and the venues, kind of implicated by the means by
3 which the government has defined the case.

4 We do believe that the challenge for us has been not
5 understanding with any level of precision precisely what it is
6 the government contends here. To be sure, they have got a
7 number of causes of action in the complaint, but we have been
8 pursuing, by way of interrogatory, from the early stages of
9 this case more refinement and explication of precisely what it
10 is they have been saying so we can understand what we need to
11 do to respond to those allegations. Our case is largely a
12 responsive case. We need to hear what it is they have got to
13 say, and then we need to respond to it.

14 While it is true that in the plaintiffs' initial
15 disclosures they identified a bunch of people, the descriptions
16 were often, here is an entity with all employees associated
17 with it, without that kind of refinement. As discovery has
18 progressed, as we have taken depositions, because we still
19 don't have what we believe are sufficient appropriate responses
20 to our interrogatories, we have had to infer from questions
21 asked at depositions and from other means what it is we think
22 they are after, and that's what gets you the number of
23 witnesses that are on the list.

24 **Again, no effort here to sort of like sandbag and have**
25 **plaintiffs not figuring out who we intend to call late in the**

1 day. If the deadline for the disclosure of trial witnesses
2 isn't until sometime next year, we can certainly make an effort
3 as to these people we are talking about who have not been
4 deposed to flag those people earlier rather than later so they
5 don't become a problem; again, to the extent there are, when
6 all said and done, such people.

7 The same thing could be done with respect to summary
8 judgment. We can make an effort to the extent we are -- we
9 think we are going to rely upon any of those folks in
10 connection with summary judgment motions to do that, not just
11 in the motion but to do that somewhat in advance of that. We
12 can make an effort to do that.

13 The additional time, your Honor, we think,
14 respectfully, and the initial hours are going to be prejudicial
15 to defendants. The parties have already undertaken a massive
16 amount of discovery. We don't believe there credibly could
17 really be any surprise here on the part the plaintiffs. While
18 I'm not questioning that they have been working hard, they have
19 also been working in this by way of investigation for many
20 years.

21 There is a five-year period post the amended consent.
22 There is an investigation that was done. There were IHs that
23 were taken. We have produced literally millions of documents,
24 put aside how many numbers of pages of paper it is.

25 And the people that we are now identifying are the

1 natural, logical extension of the plaintiffs' own class
2 proposed definition, that there are artists that they say are
3 implicated because of the way they define the market, and there
4 are the venues. We really don't think there is any surprise in
5 this at all.

6 And extending the time, while it's true, your Honor,
7 can give us 100 and give them 100 too, that's a compounding
8 prejudicial problem, in our view, on our side because, for the
9 most part, in fact if not entirely, the plaintiffs don't have
10 individuals who they have to, for every deposition of them,
11 because there are no depositions of them, prepare and defend.

12 If we are both taking more to balance out the
13 availability of depositions that can be used affirmatively and
14 defending the depositions that they are going to take of us,
15 it's a lot to do in the time that's left.

16 As has been pointed out, your Honor, we are about two
17 months out. There are 66 noticed depositions. Only 20
18 depositions have been taken. There are 66 noticed depositions
19 to be done in, so far as I can tell, less than 66 days, so it
20 is going to be a busy time as it is. And compounding that by
21 adding a bunch of depositions at the end, in a world in which
22 we feel like we are already being required to figure out what
23 their case is about indirectly, as opposed to through answers
24 to interrogatories, we think results in a prejudice to the
25 defense.

1 We ask your Honor, respectfully, to deny the requests.

2 THE COURT: Mr. Marriott, I don't know if you have the
3 case management plan in front of you, but can you remind me
4 when summary judgment briefing will be complete.

5 MR. MARRIOTT: Your Honor, I don't have the actual
6 schedule, but I have the date. We make our summary judgment
7 motion on November 10. If there is a full schedule, your
8 Honor, I don't have that handy. I just know the motion goes in
9 on November 10.

10 MR. THORNBURGH: Your Honor, I can tell you that the
11 plaintiffs' response would be due December 8 and the reply
12 would be due December 22.

13 THE COURT: Thank you. I am just thinking.

14 Let me take a step back. As to the requested
15 extension, that's fine. I'll grant the requested extension of
16 the fact deposition schedule because, as Mr. Marriott points
17 out, you have 60 some odd depositions that need to take place.
18 There is going to be scheduling issues, especially during the
19 summer months, and I think it makes sense to extend the
20 schedule, given that the requested extension is not very long.
21 I will grant that request.

22 As to the request for additional deposition time, I
23 will give the defendants the choice. The choice is this.
24 Either you can agree right now that you will not use on summary
25 judgment any affirmation or affidavit of any of these newly

1 added people, or you can say, because we want to leave the
2 option open to rely on such materials, we will give the
3 plaintiffs their additional 100 hours that they have requested.
4 So I'll leave that up to the defendants to decide in the
5 next -- say by the end of next week how they wish to proceed in
6 that way.

7 To address Mr. Thornburgh's concern about the witness
8 lists coming in in some kind of sandbagging, I am going to put
9 a pin in that for the moment, but I think that issue can be
10 addressed either by making sure that the witness list is
11 essentially a will-call list, meaning that things happen. But
12 aside from just things happening, the witnesses identified on
13 that list should be people that the party actually intends to
14 call. That will go for both sides. And I think it will be
15 helpful for everyone for other reasons. But it will also
16 prevent the kind of sandbagging that Mr. Thornburgh is
17 referring to. That's one option.

18 The other option would be to have an interim list that
19 is provided by the defendants of individuals who they, in good
20 faith, seriously are considering calling at trial, and they can
21 make an earlier disclosure of that to the plaintiffs so that
22 they can take any depositions that they need to during the
23 months before trial.

24 And we have all done this. We have all taken trial
25 depositions. Things happen at the last minute. I gather that

1 some of you probably did this during COVID because some of
2 these issues would sometimes pop up.

3 I don't know that it's going to be as big an issue,
4 based on the number of people, for the reasons that Mr.
5 Marriott is indicating.

6 That's what I am going to do.

7 But, as always, let me hear from Mr. Thornburgh and
8 then Mr. Marriott as to any requested adjustments to that
9 decision.

10 MR. THORNBURGH: Yes, your Honor. I certainly
11 understand where you're coming out on this.

12 I just want to react to one thing Mr. Marriott said
13 that I think is relevant, which is that Mr. Marriott suggested
14 or indicated that many of these individuals were individuals
15 that defendants had identified through the discovery process as
16 having relevant information that it needs to rely on in their
17 defenses.

18 As we indicated in our letter, many of these
19 individuals that defendants added are clients or customers of
20 defendants, and they have not been -- over a hundred have not
21 been subject to discovery thus far in the litigation.

22 In fact, I can tell you that we just started our
23 outreach to these individuals the defendants added. At least
24 in one case we were informed that defendants had not been in
25 touch with this nonparty individual at all thus far in

1 discovery.

2 It's not clear to me that defendants really in many
3 cases found out about these individuals during discovery. It
4 seems like in many cases these were individuals defendants knew
5 of certainly last July, when they gave us their initial
6 disclosures that had only 13 entities on there and no
7 individuals.

8 And so I certainly understand the choice that you have
9 provided to defendants, but I would just add, your Honor, that
10 there are -- certainly at least in some cases these are
11 individuals that defendants have known about for a long time
12 and disclosing them now, without plaintiffs having the
13 opportunity to take discovery, is prejudicial to us.

14 THE COURT: You can take discovery of those people,
15 and the purpose of the rule is to make sure that you know who
16 the other side is going to actually use at trial because, in
17 fairness, you should be able to depose and take discovery of
18 those people.

19 So that's why, as a condition of not giving you these
20 additional 100 hours of deposition time, I am requiring the
21 defendants to make the choice not to rely on these people for
22 summary judgment purposes, and when we get a little farther
23 along, they will also have to give either an earlier or a more
24 definitive indication that they are relying on these people for
25 trial so that they can take depositions of those people. But

1 that's all we are talking about right now because I don't think
2 that the defendants are suggesting that you are inhibited in
3 any way from taking discovery of these people.

4 Now, if you have a separate issue that the defendants
5 played games and did not properly identify these people in
6 response to other discovery demands and didn't identify them as
7 custodians, etc., this is certainly an issue that you can raise
8 to the Court, but that is not the issue that has been raised on
9 the current motion to compel.

10 Does that make sense?

11 MR. THORNBURGH: It does, your Honor. Thank you.

12 THE COURT: Mr. Marriott, anything further to add?

13 MR. MARRIOTT: Your Honor, yes, please. One, I guess,
14 observation and then a request for clarification.

15 As the observation, to be clear, we are not saying we
16 didn't know of the existence of these people. One of them, for
17 example, is Taylor Swift. Everybody knows of Taylor Swift and
18 many of the other artists that are there.

19 What we are saying is that, in view of the allegations
20 made that were not properly articulated in response to
21 interrogatories, but that as we have inferred what it is that
22 plaintiffs are saying, we think there are people that we may, I
23 underscore may, need to rely upon.

24 It's not that we didn't know of the existence of the
25 individuals. I think largely the world knows of the existence

1 of most of these people and venues.

2 That's the statement, your Honor. The observation is,
3 just so I make sure I understand it, as to the choice that your
4 Honor has given us, and we appreciate the choice, as to the
5 100, I assume that 100 would go both ways so that we would both
6 get 100, and we would have to -- and plaintiffs would get 100,
7 but I wanted to make sure I understood that correctly.

8 THE COURT: Yes. You have Mr. Thornburgh's agreement
9 on that.

10 MR. MARRIOTT: Thank you.

11 The other one was just, what I thought we were talking
12 about with respect to the 100 is what would be 100 depositions
13 of third parties, but I want to make sure that it's third
14 parties and it is not both third parties and Live Nation and/or
15 Ticketmaster. If there is any clarity on whether the 100 are
16 limited to third parties or could also be used for Live Nation
17 Ticketmaster, it would be useful to understand that.

18 THE COURT: Let me ask Mr. Thornburgh. Who are these
19 additional people, and do you have a view on what Mr. Marriott
20 just said?

21 MR. THORNBURGH: Your Honor, I would just point out
22 that once you add 100 hours to the bucket of hours, so to
23 speak, I am not quite sure how Mr. Marriott is intending those
24 to be divvied up. If the question is, the last 100 hours, how
25 would those be used? Certainly I think plaintiffs would be

1 amenable to only using those last 100 hours later in fact
2 discovery for third parties.

3 THE COURT: Mr. Marriott, I think that's the
4 clarification that you were looking for.

5 MR. MARRIOTT: It is, and I appreciate it. Thank you.

6 THE COURT: Anything further, Mr. Thornburgh?

7 MR. THORNBURGH: No, your Honor.

8 THE COURT: Anything further, Mr. Marriott?

9 MR. MARRIOTT: No, your Honor.

10 For clarity, should we make the choice by letter to
11 the Court a week from today, so I make sure we have the
12 mechanics down of how you would like us to do this.

13 THE COURT: If you make the choice and the parties are
14 in agreement, then you certainly don't need my approval. But I
15 guess, just so the record is clear, maybe put in a letter and
16 say the parties have discussed, and we have agreed to provide
17 the additional 100 hours, and you can just put that in the
18 record. If you need it, I'll so order it.

19 MR. MARRIOTT: Understood. Thank you, your Honor.

20 THE COURT: Great.

21 The only thing that's left on my to-do list would be
22 the issue of the witness lists and how we might modify that
23 slightly to accommodate the plaintiffs' concerns. That's
24 obviously not an issue that needs to be resolved right now.

25 But please, Mr. Thornburgh, don't let me forget. OK?

1 MR. THORNBURGH: We will not let you forget, your
2 Honor.

3 THE COURT: Very good. Everyone, have a great
4 weekend. We are adjourned.

5 (Adjourned)
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